

REMARKS

Claims 12-14 and 16-22 are pending in this application. The Office Action rejects claims 12-14, 20 and 22 under 35 U.S.C. §102(e); rejects claims 15-17 under 35 U.S.C. §103(a); and provisionally rejects claims 12-22 on the ground of nonstatutory obviousness-type double patenting. By this Amendment, claims 12 and 16-17 are amended, and claim 15 is cancelled. Support for the amendment to claim 12 may be found in original claim 15 and the present specification at, for example, page 3, lines 1-4. No new matter is added.

The courtesies extended to Applicant's representative by Examiner Mulvaney at the interview held October 14, 2008, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.

I. Rejection under 35 U.S.C. §102(e)

Claims 12-14, 20 and 22 are rejected under 35 U.S.C. §102(e) as anticipated by Nee (U.S. Patent No. 6,544,616).

Applicants respectfully submit that Nee does not disclose each and every feature of amended independent claim 12. Specifically, Nee at least fails to disclose that the inorganic material of the active layer is a tellurium and zinc alloy consisting of an atomic percentage of between 60% and 70% of zinc and between 30% and 40% of tellurium. By this Amendment, the features of non-rejected claim 15 are incorporated into independent claim 12, and claim 12 is further amended to recite that the inorganic material "consists of" the named components.

Accordingly, Nee does not anticipate amended independent claim 12 for at least the reason that Nee does not anticipate original claim 15. Dependent claims 13-14, 20 and 22 are therefore also not anticipated for at least the reason that independent claim 12 is not anticipated.

Reconsideration and withdrawal of the rejection are respectfully requested.

II. Rejection under 35 U.S.C. §103(a)

Claims 15-17 are rejected under 35 U.S.C. §103(a) as having been obvious over Nee in view of Shigematsu (EP 0 387 016). Applicants respectfully traverse the rejection.

To the extent that amended independent claim 12 incorporates some of the features of original dependent claim 15, Applicants respectfully submit that Nee in view of Shigematsu does not teach or suggest all the features of amended independent claim 12. Specifically, Nee in view of Shigematsu fails to teach or suggest that the inorganic material of the active layer is a tellurium and zinc alloy consisting of an atomic percentage of between 60% and 70% of zinc and between 30% and 40% of tellurium. Instead, Shigematsu teaches a composition including zinc and tellurium, but also always including at least germanium (Ge). See Shigematsu at, for example, column 3, lines 25-36. Therefore, Shigematsu does not teach or suggest a composition *consisting of* an atomic percentage of between 60% and 70% of zinc and between 30% and 40% of tellurium.

Furthermore, it would not have been obvious to have combined Nee and Shigematsu, and then to have modified the resultant combination to obtain the claimed invention. Nowhere does either reference provide any reason or rationale for one of ordinary skill in the art to have taken the alloy composition of Shigematsu, which specifically includes Germanium, and then to have used a different, non-Germanium-containing alloy in its place. The references thus would not have rendered obvious at least the alloy limitations of the instant claims.

Accordingly, independent claim 12 would not have been obvious over the applied references, for at least the reasons discussed above. Dependent claims 16-17 therefore also would not have been obvious for at least the reason that independent claim 12 would not have been obvious.

Reconsideration and withdrawal of the rejection are respectfully requested.

III. Double Patenting

Claims 12-22 are provisionally rejected on the grounds of non-statutory obviousness type double patenting over copending application serial no. 10/535,338. Applicants note that the Office Action indicates that the double patenting rejection is over serial no 11/535,338, however as was discussed at the interview, this was a typographical error, and application serial no. 10/535,338 was intended.

Without admitting the propriety of the rejection, and in the interest of advancing prosecution, enclosed herewith is a Terminal Disclaimer.

Reconsideration and withdrawal of the provisional rejection are respectfully requested.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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